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No. 90-683

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

THE GEORGIA MARBLE COMPANY,
Petitioner,
v.
WALTER CECIL WHITLOCK AND COLEEN J. WHITLOCK,
Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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REPLY IN SUPPORT OF PETITION

Respondents' Brief in Opposition concedes that this case turns on whether Georgia's mineral interest forfeiture statute is the type of self-executing statute this Court upheld in *Texaco v. Short*, 454 U.S. 516, 102 S. Ct. 781, 70 L.Ed. 2d 733 (1982). If it is not, this Court's decision in *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 108 S. Ct. 1340 (1988) requires that Georgia's statute be struck down.

With all due respect to Respondents' position, it is simply impossible to say that Georgia's statute is in any way self-executing. Unlike Indiana's statute in *Texaco*, which caused the mineral interest to lapse much like a cause of action expires under a statute of limitations, Georgia's seven year forfeiture period literally never begins to run until the aid of the state court system is invoked. A property owner in Georgia may fail for 50 years to work or pay taxes on his property, yet if no petition for forfeiture is filed he retains all ownership rights to his property. By contrast, a property owner who merely fails to pay taxes or work his mineral interest for eight years and who suffers the misforture of having a petition for declaratory judgment filed against him loses his property once the petition is filed.

Hence, the Georgia statute is anything but self-executing. Indeed, the entire statutory forfeiture scheme is dormant until the support of the state court system is invoked. Georgia's statute cannot under any circumstances be described as self-executing, and thus, as Respondents themselves recognize, cannot survive a challenge under this Court's holding in *Tulsa Professional*.

Summary Disposition

Petitioner respectfully submits that this case is appropriate for summary disposition pursuant to Rule 16. The question presented is purely legal and the Respondents concede that this case is controlled by whether Georgia's statute is self-executing or not. Under *Tulsa Professional*, the answer to that question is obvious and summary reversal of the Supreme Court of Georgia is therefore appropriate.

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